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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/805,784	03/22/2004	Martin Balzer	LIP 002 DIV	9939

7590 02/26/2009  
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EXAMINER
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BRADEN, SHAWN M

ART UNIT	PAPER NUMBER
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3781

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02/26/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/805,784	<b>Applicant(s)</b> BALZER ET AL.
	<b>Examiner</b> SHAWN M. BRADEN	<b>Art Unit</b> 3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 18-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____.                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____.  | 6) <input type="checkbox"/> Other: ____.                          |

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### ***Double Patenting***

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory

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obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 18-27 are rejected on the ground of nonstatutory obviousness-type

double patenting as being unpatentable over claims 1-11 of U.S. Patent No. 6,715,626.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the only clear difference is that the seam overlaps or is a pinch seam these are obvious design choice differences the inventive feature of the vented duct is the same and disclosed in the parent patent.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 18, is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear if applicant is attempting to make a

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product by process claim with the method of making included in claims 18 (method of making a container “ molded container”) but it also appears applicant is claiming an apparatus in the in depended claims. For examination purposes the examiner will assume applicant intends on pursuing a patent on the apparatus and the method steps of “molding container”, will be treated as a container without considering how the container was made.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 18-21,24-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Stromsoe (USPN 2,273,154).

8. With respect to claim 18, Stromsoe shows, a plastic (col 2 line 51) container body (25) consisting of two sections (40,42), each section having wall portions, said wall portions having an-inner (44) and outer (48) wall surfaces, said inner wall surface of one section joined to said outer wall surface of the other section by first (46) and second (50) welded seams, wherein said first and second welded seams are separated by a duct (53), said duct extending in the longitudinal direction of said wall portions, and means for filling the duct with air and venting same of air (55,54) wherein said two

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sections comprises first (40) and second (42) shell portions and wherein said shell portions are obtained from a molded container (col 2 line 52).

9. With respect to claim 19, Stromsoe shows, said means of filling the duct includes respective connections (54,55).

10. With respect to claim 20, Stromsoe shows the connections are provided with valves (54 meets structure and recitation of valve).

11. With respect to claim 21, Stromsoe shows which is of a multi-layer structure having at least one barrier layer for hydrocarbons (between 44&47), which is completely embedded in the container body wall.

12. With respect to claim 24, Stromsoe shows further including a filter element (54) operatively associated with said duct for filtered venting thereof.

**13.** With respect to claim 26, Stromsoe shows further including means (54) for pressure filling said duct with air.

**14.** With respect to claim 27, Stromsoe shows a multi-layer (fig. 6-10) perform, having a wall including in which at least one barrier layer for hydrocarbons (between 44 & 47) is embedded.

### ***Claim Rejections - 35 USC § 103***

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stromsoe.

Stromsoe as applied above discloses the invention substantially as claimed. However Stromsoe does not disclose filter element is an activated carbon filter.

It is well known in the prior art to use filter element is an activated carbon for a filter in the same field of endeavor for the purpose of filtering.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use activated carbon filter in order to filter the medium passing threw filter.

It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

17. The examiner's statement of well-known or with in the general skill of a worker, in the art is taken to be prior art since applicant has not traversed the examiner's assertion.

### ***Response to Arguments***

18. Applicant's arguments filed 12/22/2008 have been fully considered but they are not persuasive. Examiner notes no terminal disclaimer has been received, therefore the double patenting rejection still stands.

19. In response to applicant's arguments

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"In the Office Action of June 20, 2008, at page 6, paragraph 19, it was noted that this application is a continuation of U.S. Appl. 10/805,784. This is incorrect. This application is a divisional of U.S. Appl. 09/994,603 filed November 6, 2001 which application claims priority to German Patent Application No. 100 54 874.1 filed November 6, 2000"

20. Applicant is correct, the examiner made a typographical error, continuation should have been "RCE or request for continued examination " The correction is not believed to be a reason to withdraw the finality, since the final was proper since the claims of a new application may be finally rejected in the first Office action in those situations where (A) the new application is a continuing application of, or a substitute for, an earlier application, and (B) all claims of the new application (1) are drawn to the same invention claimed in the earlier application, and (2) would have been properly finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application.

21. In response to applicants argument to the changing of the scope using the term "consisting of" Examiner notes that this term has not been added to the preamble, but into the further description of the body. "container body consisting of two sections" and clearly stated in previously actions, Stromsoe clearly shows, to the same extent as applicant claims, consisting of two sections (40 and 42).

22. In response to applicant's next argument, "Item 46 therefore does not identify a welded seam", Applicant does make a good point as to Stromsoe does not identify 46 as a welded seam, but 46 does meet the structure and recitation of the claim language



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a "welded seam" it appears applicant agrees that the lead line of 46 is pointed at a seam, and that seam joins to components together meeting the recitation of weld.

Therefor examiner upholds the rejection.

### ***Conclusion***

23. This is a RCE of applicant's earlier Application No. 10/805,784. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHAWN M. BRADEN whose telephone number is (571)272-8026. The examiner can normally be reached on Mon-Friday 9-6:30 est.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571)272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. M. B./  
Examiner, Art Unit 3781

/Anthony D Stashick/  
Supervisory Patent Examiner, Art Unit 3781